

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 2161 - HB 2369

March 21, 2022

SUMMARY OF BILL AS AMENDED (016144): Designates social media platforms (SMPs) as common carriers and requires the entities to obtain certificates of public convenience and necessity (CCNs) from the Tennessee Public Utilities Commission (TPUC) by April 1, 2023, and by January 1, 2024 for each year thereafter.

Requires TPUC to prescribe by rule in consultation with the office of the Attorney General and Reporter (AG) the form and fee for the certificate application. Authorizes TPUC to prescribe an equitable fee schedule based on each SMP's gross annual revenue or the number of global platform participants. Requires SMP operators to file certain information as part of the application for a certificate. If TPUC finds that a SMP operator is operating without a valid CCN or has failed to provide TPUC with all information required, TPUC is required to provide SMP operators with written notice of failure to comply. If, after 60 days, the operator remains out of compliance, then TPUC shall conduct a contested case hearing in accordance with the *Uniform Administrative Procedures Act* and may fine the operator up to \$50,000 at TPUC's discretion.

Establishes that SMPs may not intentionally deplatform or shadow ban a user of the SMP based on various factors. Authorizes TPUC to investigate suspected violations and conduct contested case hearings. Prescribes penalties and fines that TPUC may issue for violations.

Upon a finding of a violation after a contested case hearing, a user is authorized to bring a private cause of action and may be awarded various damages, costs, and fees.

Effective upon becoming law for purposes of promulgating rules and carrying out administrative duties; effective for all other purposes on April 1, 2023.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Expenditures –

**\$100,600/FY22-23 and Subsequent Years/
Tennessee Public Utilities Commission**

Other Fiscal Impact – The proposed legislation may result in an increase in state fee and fine revenue to Tennessee Public Utilities Commission. However, the exact timing and extent of such increase cannot be reasonably determined. To the extent the Commission is unable to collect sufficient revenue from social

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media platforms to offset incurred expenditures, a General Fund appropriation is assumed to be necessary.

Further, additional staff for the Commission and the Administrative Office of the Courts may be necessary in the future; due to lack of data, the extent and timing of any increase in expenditures cannot be determined at this time.

Assumptions for the bill as amended:

- The proposed legislation authorizes TPUC to regulate SMPs as common carriers and requires such entities to obtain an annual CCN from TPUC for a fee beginning April 1, 2023.
- If TPUC finds that a SMP operator is operating without a CCN or did not provide all information required, TPUC must provide the operator with written notice of its failure to comply. If, after 60 days of providing notice, the operator remains out of compliance, then TPUC shall conduct a case hearing and may fine the operator up to \$50,000 and may levy the fine every 30 days the operator remains noncompliant.
- The proposed legislation provides that SMPs shall not intentionally deplatform or shadow ban a user based on political ideology, viewpoint discrimination, personal animus, or discrimination based on race, creed, color, religion, sex, age, or national origin.
- Per the language of the legislation:
 - “Deplatform” means the action or practice by a social media platform to permanently delete or ban a user, or to temporarily delete or ban a user, from the social media platform for more than 21 consecutive days;
 - “Shadow ban” means an action by a social media platform, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform and includes such actions by a social media platform that are not readily apparent to a user.
- Requiring TPUC to consult with the AG for any rules promulgated to effectuate the purposes of the proposed legislation will not result in any significant impact to the AG.
- By the authority granted in the legislation, TPUC may investigate all instances of deplatforming or shadowbanning committed by SMPs and upon finding a violation after a contested case hearing:
 - TPUC may invoke the following penalties:
 - Fine the operator of a SMP:
 - For a user who is not a candidate for public office or an official, \$25,000 per day the SMP is not in compliance; or
 - For a user known to be a candidate for public office or an official, \$100,000 per day the SMP is not in compliance.
 - Suspend or revoke the SMP’s certificate of public convenience and necessity indefinitely until satisfactory proof of compliance is provided to TPUC.
 - A user may bring a private cause of action for a violation, and in addition to the fines levied by TPUC, a court of competent jurisdiction may award the user:

actual damages, punitive damages, other forms of equitable relief, including injunctive relief, and costs and reasonable attorney fees.

- According to TPUC, the commission does not currently have staff with the subject matter expertise necessary to implement such a program. TPUC has three vacant positions which may be used to fulfill the staffing requirements that would result from the proposed legislation.
- Based on information provided by TPUC:
 - The commission has the following vacant positions:
 - One Senior Associate Counsel position, currently funded at \$88,073 (\$69,588 salary + \$18,485 benefits);
 - One Utility Rate Specialist 3, currently funded at \$54,013 (\$40,380 salary + \$13,633 benefits); and
 - One Utility Rate Specialist 4, currently funded at \$58,841 (\$44,520 salary + \$14,321 benefits).
 - The total funding for the vacant positions is \$200,927 (\$88,073 + \$54,013 + \$58,841) in FY22-23 and subsequent years.
 - The Senior Associate Counsel Position is currently funded at the minimum salary level. TPUC will need to hire at the higher end of the range resulting in an increase to expenditures of \$131,144 [(\$106,524 salary + \$24,620 benefits).
 - The Utility Rate Specialist positions will need to be reclassified to Telecom/Utilities Consultants, resulting in an increase to state expenditures of \$170,376 [(\$67,114 salary + \$18,074 benefits) x 2 positions].
 - The total increase to state expenditures is \$100,593 [(\$131,144 + \$170,376) - \$200,927] in FY22-23 and subsequent years.
- It is unknown how many reports TPUC will receive and review annually. If that figure exceeds a certain amount, additional staff will be necessary at some point. The extent and timing of any future required staffing is unknown.
- Any private cause of action brought by a user will occur between private parties and, therefore, will have a not significant impact on state and local government.
- At this time, it is estimated that increases in private causes of action can be absorbed by the current resources and personnel of the Administrative Office of the Courts.
- However, it cannot be reasonably forecasted the increased number of cases due to the lack of data on how many Tennessee residents have been or will be wrongfully deplatformed or shadow banned. The assumption that any impact can be absorbed will need to be revisited if more cases are filed than originally anticipated.
- TPUC does not receive any General Fund dollars. The Commission is self-funded through a mix of dedicated fees and reimbursement programs.
- The extent to which TPUC will be able to collect fee and fine revenue as a direct result of this legislation is unknown. In addition, the extent to which current TPUC reserves can be utilized to fund the expenditures incurred as a direct result of this legislation is unknown.
- For the purposes of this fiscal analysis, it is assumed that the additional expenditures would require a General Fund appropriation if TPUC is unable to collect sufficient fees and fines from SMPs to offset such expenditures.

IMPACT TO COMMERCE OF BILL AS AMENDED:

Other Commerce Impact – A precise impact to jobs and commerce in Tennessee cannot reasonably be estimated.

Assumptions for the bill as amended:

- The proposed legislation will result in increased expenditures for any SMP that chooses to obtain a CCN or that is fined due to a violation.
- A precise impact to jobs and commerce in Tennessee cannot reasonably be estimated due to multiple unknown variables such as, the number of SMPs operating in the state, the number of SMPs that will obtain a CCN from TPUC, the amount of fines a SMP may be charged, the number of private causes of action that may be brought against an SMP, and any damages that may result of such causes of action.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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